

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3728 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ASLAM KHUDABAX SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for M/S THAKKAR ASSOC. for Petitioner
MR KC SHAH, AGP for Respondents.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 11/09/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner-detenu-Aslam Khudabax Shaikh has brought under challenge the detention order dated 9/4/1996 rendered by the respondent no.2 u/S. 3(1) of the Gujarat Prevention of Anti-Social Activities Ac, 1985 (Act No. 16 of 1985), hereinafter referred to as 'the PASA Act'.

2. The grounds on which the impugned order of detention has been passed appear at Annexure-B to the petition. They inter-alia indicate that the petitioner by himself and with the aid of his associates has been carrying on criminal and anti-social activities of storing and selling foreign liquor as also assaulting and causing hurt to the persons of other community. Following offence has been registered in the Shahpur Police Station against him :-

- 1) CR 137/93 U/Ss.143, 147, 149, 336, 353, 365, 307, 337 and 188 of the IPC r/w. sec. 25/1/C of the Arms Act and sec.3/4 of the TADA Act and sec. 135(1) of the B.P. Act.
Pending in court.

Following prohibition offences have been registered against the petitioner in Shahpur Police Station :-

- 1) CR 103/93 U/Ss.66B,65A,E & 81 of Bombay Prohi.Act
6 bottles of foreign liquor
Pending trial.
- 2) CR 119/93 U/Ss.66B, 65A,E of Bombay Prohi. Act
6 bottles of foreign liquor
Pending trial.
- 3) CR 123/96 U/ss.66B, 65A,E & 81 of Bombay Prohi. Act
15 bottles of foreign liquor and 15
bottles of beer. Pending investigation.

It is to be noted that the first mentioned CR namely CR No. 137/93 under the provisions of the Indian Penal Code and other Acts and first two prohibition offences are of 1993 and it has been submitted that the said cases are far enough for subjective consideration/application of mind for preventive detention. The last of the prohibition offences is dated 25/3/1996 and the petitioner has remained in custody till the order of detention is passed.

It cannot be gain said that the above facts shall have to be borne in mind while considering the ground of challenge to the impugned order of detention arising from Mustakmiya's case as will be noted soon hereafter.

3. It has been recited that the detenu's anti-social activity tends to obstruct the maintenance of public order and in support of the said conclusion statements of witnesses have been relied upon. They indicate about two

incidents, one occurring on 25/3/1996 and another occurring on 3/4/1996. Both the incidents indicate beating in the public place the witnesses and rushing at the people collected at the place with knife leading to the dispersing of the people collected on such occasions.

4. It is on the aforesaid incidents that the detaining authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the petitioner. The petitioner has been stamped as both 'boot-legger' and 'dangerous person' within the meaning of section 2(b) and 2(c) of the PASA Act.

5. I have heard the learned advocate for the petitioner and the Id. A.G.P. for the State. The petitioner has challenged the aforesaid order of detention on number of grounds inter-alia on the ground that there is no material to indicate that the detenu's conduct would show that he is habitually engaged in the anti-social activities which can be said to be prejudicial to the maintenance of public order. This is a case of individual incidents affecting law and order and in the facts of the case would not amount to leading to conclusion that the same would affect public order. Reliance has been placed on the following decision of the Apex Court :-

Mustakmiya Jabbarmiya Shaikh v/s. M.M. Mehta,
C.P. , reported in 1995 (2) G.L.R. 1268, where the incidents were quoted in paras: 11 and 12 of the citation and it has been submitted that facts of the present case run almost parallel to the facts before the Apex Court in Mustakmiya's case (supra).

6. As said by the Apex Court in the case of Mustakmiya (supra) there is a marked difference between the detenu's conduct showing that he is habitually engaged in anti-social activities which can be said to be affecting law and order situation and the detenu's conduct showing that he is habitually engaged in the anti-social activities, which can be said to be prejudicial to the maintenance of public order. On comparing the facts before the Supreme Court with the facts in the present case, this is clearly a case of individual incidents affecting law and order and in the facts of the case, the detenu's conduct would not amount to leading to a conclusion that the same would affect public order.

7. In reply Mr. K.C. Shah, Ld. A.G.P. for the State has relied upon a decision in the case of Mrs. Harpreet Kaur Harvinder Singh Bedi v/s. State of Maharashtra and anr., reported in AIR 1992 SC 979. Comparing the facts of the present case with the facts in the case before the Supreme Court, it clearly appears that the decision in Mrs. Harpreet Kaur's case (supra) would not be applicable.

8. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed directly on the strength of decision of Mustakmiya's case (supra), it is not necessary to deal with the other grounds. Hence, following order is passed :-

9. The impugned order of detention is hereby quashed and set aside. The petitioner-detenu-Aslam Khudabax Shaikh shall be forthwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

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